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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Clarence Wayne Dixon, Petitioner, -vs- David Shinn, et al., Respondents.	CV 14–258–PHX–DJH **RESPONSE TO MOTION TO STAY EXECUTION AND ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS** **[CAPITAL CASE]**

Respondents, pursuant to the Court's order of May 9, 2022 (Document Number [Doc.] 88), hereby respond to Petitioner Clarence Wayne Dixon's May 9, 2022 motion to stay execution and to his May 9, 2022 petition for writ of habeas corpus. Docs. 86, 87. For the reasons set forth in the following memorandum of points and authorities, Respondents respectfully request that the Court deny Dixon's stay motion, and deny and dismiss his pending petition with prejudice.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. BRIEF FACTUAL AND PROCEDURAL BACKGROUND.

In June 1977, Dixon struck a teenage girl with a metal pipe and was charged with assault with a deadly weapon. *Dixon v. Ryan (Dixon IV)*, 932 F.3d 789, 796 (9th Cir. 2019). Two court-appointed psychiatrists determined that Dixon was not competent to stand trial under Rule 11, noting his schizophrenia and depression. *Id.* After restoration proceedings, Dixon waived his right to a jury trial, and the trial court found him not guilty by reason of insanity. *Id.* Dixon was released pending civil proceedings on January 5, 1978. *Id.*

The next day, Deana Bowdoin, a 21-year-old ASU student, was found dead in her apartment. *State v. Dixon (Dixon II)*, 226 Ariz. 545, 548, ¶¶ 2–3 (2011). She had been strangled with a belt and stabbed. *Id.* Investigators found semen on Deana's underwear but were unable to match the resulting DNA profile to any suspect. *Id.*

In 1985, Dixon violently sexually assaulted a 20-year-old student near the NAU campus in Flagstaff. *State v. Dixon (Dixon I)*, 153 Ariz. 151, 152 (1987). The NAU police played a significant role in developing the evidence that resulted in Dixon's arrest and conviction for that crime. The NAU police were called when the victim returned to her dorm after the assault. *Id.* The victim gave a statement to an NAU police officer, and the NAU police broadcast an "attempt to locate" call based on the description of Dixon the victim provided. *Id.* Dixon was ultimately arrested by a Flagstaff Police Officer who heard the attempt to locate call. *Id.*

Following Dixon's arrest, Officer Bolson of the NAU Police Department showed the victim a photographic lineup in which she identified Dixon. *Id.* at 153. The NAU officer then allowed the victim to view Dixon through a window, and she once again identified him as her assailant. *Id.* at 153–54. Dixon was convicted of seven felony offenses and sentenced to multiple life sentences. *Id.* at 152.

In 2001, a Tempe Police detective checked the DNA profile from the semen on Deana Bowdoin's underwear and found that it matched that of Dixon, whose DNA profile was in a national database as a result of his 1985 convictions. *Dixon II*, 226 Ariz. at 548, ¶ 4; *Dixon IV*, 932 F.3d at 796. Dixon had lived across the street from Deana at the time of the murder, and her friends and family knew of no previous contact between them. *Dixon II*, 226 Ariz. at 548–49, ¶ 4.

Dixon was charged with first degree murder. *Dixon II*, 226 Ariz. at 549, ¶ 5. Before trial, Dixon sought to represent himself because his appointed counsel would not file a motion he requested them to file. *Dixon IV*, 932 F.3d at 797. The legal theory Dixon sought to pursue was that "the DNA evidence linking Dixon to [Deana's] murder should be suppressed as fruit of the poisonous tree because it was obtained in connection with his 1985 assault conviction. The 1985 conviction itself was invalid, Dixon believed, because the campus police lacked the authority to investigate." *Id.*; *see also Dixon v. Ryan (Dixon III)*, 2016 WL 1045355, *5 (D. Ariz. March 16, 2016) ("This issue involved Dixon's theory that NAU officers lacked the statutory authority to investigate the case; therefore, according to Dixon, his prior conviction was 'fundamentally flawed' and the DNA comparison made pursuant to his invalid conviction should be suppressed."). After conducting a colloquy with Dixon, the trial court found that Dixon "knowingly, intelligently, and voluntarily waived" his right to counsel, and Dixon represented himself at trial. *Dixon IV*, 932 F.3d at 797–98.

Dixon was convicted of first-degree murder and sentenced to death. *Dixon II*, 226 Ariz. at 549, ¶ 5. Throughout the ensuing years, Dixon argued that his "perseveration" on the DNA suppression issue regarding the NAU police, in addition to his 1977 Rule 11 proceedings and 1978 not guilty by reason of insanity verdict, showed his lack of competency to waive counsel. The state and federal courts uniformly rejected these challenges. In Dixon's post-conviction proceeding, the postconviction judge, who had presided over Dixon's trial, noted that Dixon's

"thoughts and actions" throughout the trial proceedings "demonstrated coherent and rational behavior." *Dixon III*, 2016 WL 1045355, at *12. The Arizona Supreme Court denied review of that decision.

In its 2019 opinion, the Ninth Circuit found that because Dixon's competency and mental health were not at issue with respect to the 1985 assault and resulting conviction, "[t]he 1977 evaluations and the 1978 not guilty by reason of insanity verdict thus shed little light on Dixon's competence at the time he chose to waive counsel in 2006." *Dixon IV*, 932 F.3d at 803. The court noted that the record in his capital case contained "no evidence of competency issues at any time throughout the course of these proceedings," and that the record demonstrated that at the time Dixon sought to represent himself he "understood the charges against him and the potential sentences, he was able to articulate his legal positions and respond to questions with appropriate answers, and that Dixon demonstrated rational behavior." *Id.* Significantly, the court stated that Dixon's interest in the DNA suppression issue "was not so bizarre or obscure as to suggest that Dixon lacked competence." *Id.*

This Court had likewise concluded that "Dixon's obsession with the NAU suppression motion was not so bizarre as to suggest incompetence," citing numerous decisions reaching that same conclusion with regard to other criminal defendants:

> "Criminal defendants often insist on asserting defenses with little basis in the law, particularly where, as here, there is substantial evidence of their guilt," but "adherence to bizarre legal theories" does not imply incompetence. *United States v. Jonassen*, 759 F.3d 653, 660 (7th Cir. 2014) (noting defendant's "persistent assertion of a sovereign-citizen defense"); *see United States v. Kerr*, 752 F.3d 206, 217–18 (2d Cir.), *as amended* (June 18, 2014) ("Kerr's obsession with his defensive theories, his distrust of his attorneys, and his belligerent attitude were also not so bizarre as to require the district court to question his competency for a second time."). "[P]ersons of unquestioned competence have espoused ludicrous legal positions," *United States v. James*, 328 F.3d 953, 955 (7th Cir. 2003), "but the

> articulation of unusual legal beliefs is a far cry from incompetence." *United States v. Alden*, 527 F.3d 653, 659–60 (7th Cir. 2008) (explaining that defendant's "obsession with irrelevant issues and his paranoia and distrust of the criminal justice system" did not imply mental shortcomings requiring a competence hearing).

Dixon III, 2016 WL 1045355 at *9.

On April 5, 2022, upon the State's motion and after Dixon concluded his direct appeal, first postconviction relief, and federal habeas corpus proceedings, the Arizona Supreme Court issued a warrant of execution setting an execution date of May 11, 2022. On April 9, 2022, Dixon filed a motion for determination of competency under A.R.S. § 13–4022 with the state court. The court granted his request on the same day, finding that Dixon's motion "satisfies the minimum required showing that reasonable grounds exist for the requested examination and hearing, within the meaning of A.R.S. § 13–4022(C) and as otherwise required by *Ford v. Wainwright*," and set an evidentiary hearing. Respondents petitioned the Arizona Supreme Court for special action relief from the superior court's grant of an evidentiary hearing, and, after the matter was fully briefed by the parties, the Arizona Supreme Court remanded the matter to the superior court with instructions to "reconsider its ruling in light of the response and reply" filed by the parties. Order, No. CV-22-0092-SA, *State v. Hon. Robert Carter Olson* (Ariz. April 25, 2022), Doc. 10. On April 27, 2022, the Superior Court affirmed its grant of an evidentiary hearing.

The superior court conducted an evidentiary hearing on the matter on May 3, 2022;[1] that same day the court issued its ruling, finding that Dixon was competent

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[1] Exhibit A is a copy of the State's response to Dixon's special action petition. Pages 9–12 contain a summary of the evidence presented at the hearing; because of time constraints, Respondents were unable to include a summary of the hearing in this response.

to be executed. *See* Doc. 89–1 On May 9, 2022 the Arizona Supreme Court declined to accept jurisdiction of Dixon's petition for special action relief of the trial court's ruling, and Dixon subsequently filed his pending motion to stay his execution, as well as his habeas petition, with this Court.

II. THE COURT SHOULD DENY DIXON'S STAY MOTION.

"A stay is not a matter of right, even if irreparable injury might otherwise result." *Nken v. Holder*, 556 U.S. 418, 129 S. Ct. 1749, 1760 (2009) (quoting *Virginian R. Co. v. United States*, 272 U.S. 658, 672 (1926)). "The party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion." *Id*. at 1761 (citing cases). While a stay involves the exercise of judicial discretion, it is not unbridled discretion; legal principles govern the exercise of discretion. *Id*. Moreover, "a stay of execution is an equitable remedy. It is not available as a matter of right, and equity must be sensitive to the State's strong interest in enforcing its criminal judgments[.]" *Hill v. McDonough*, 547 U.S. 573, 584 (2006). "Both the State and the victims of crime have an important interest in the timely enforcement of a sentence." *Id*. (citing *Calderon v. Thompson*, 523 U.S. 538, 556 (1998)). Equity does not tolerate last-minute abusive delays "in an attempt to manipulate the judicial process." *Nelson*, 541 U.S. at 649 (quoting *Gomez*). "Repetitive or piecemeal litigation presumably raises similar concerns" as litigation that is "speculative or filed too late in the day." *Hill*, 547 U.S. at 585. *See also Gomez v. United States Dist. Court for Northern Dist. of Cal.*, 503 U.S. 653, 654 (1992) (per curiam) (noting that the "last-minute nature of an application" or an applicant's "attempt at manipulation" of the judicial process may be grounds for denial of a stay).

To be entitled to relief, a movant must demonstrate (1) that he is likely to succeed on the merits, (2) that he is likely to suffer irreparable harm, (3) that the balance of equities tips in his favor, and (4) that an injunction is in the public interest. *Ramirez v. Collier*, ___ U.S. ___, 142 S. Ct. 1264, 1275 (2022) (citing

Winter v. Natural Res. Def. Council, Inc, 129 S. Ct. 365, 374, 376 (2008)); *McDonough*, 547 U.S. at 584; *Beardslee v. Woodford*, 395 F.3d 1064, 1067 (9th Cir. 2005). The burden of persuasion is on the movant, who must make a "clear showing." *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997 (per curiam).

These principles apply when a capital defendant asks a federal court to stay his pending execution. *Hill*, 547 U.S. at 584. A stay of execution is an equitable remedy and "equity must be sensitive to the State's strong interest in enforcing its criminal judgments without undue interference from the federal courts." *Id*. A court can consider "the last-minute nature of an application to stay execution in deciding whether to grant equitable relief." *Beardslee*, 395 F.3d at 1068 (quoting *Gomez v. United States District Court*, 503 U.S. 653, 654 (1991)). Thus, courts "must consider not only the likelihood of success on the merits and the relative harm to the parties, but also the extent to which the inmate has delayed unnecessarily in bringing the claim." *Id*. (quoting *Nelson v. Campbell*, 541 U.S. 637, 649–50 (2004)).

Moreover, last minute stays of execution are particularly disfavored, as well-worn principles of equity attest. Late-breaking changes in position, last-minute claims arising from long-known facts, and other "attempt[s] at manipulation" can provide a sound basis for denying equitable relief in capital cases. *Ramirez*, ___ U.S. ___, 142 S. Ct. at 1282 (citing *Gomez v. United States Dist. Court for Northern Dist. of Cal*., 503 U.S. 653, 654 (1992) (*per curiam*) ("A court may consider the last-minute nature of an application to stay execution in deciding whether to grant equitable relief."); see also *Hill*, 547 U.S. at 584 ("A court considering a stay must also apply a strong equitable presumption against the grant of a stay where a claim could have been brought at such a time as to allow consideration of the merits without requiring entry of a stay." (cleaned up)).

Dixon cannot meet the high standard for a stay of execution. Although the Arizona Supreme Court issued its warrant of execution on April 5, 2022, Dixon

waited until May 9, 2022 to request his last-minute stay of execution. And more importantly, as discussed below, a stay is not appropriate here, because Dixon's pending habeas claim has no merit.

III. THE COURT SHOULD DENY AND DISMISS DIXON'S HABEAS PETITION.

Because Dixon filed his timely[2] habeas petition after April 24, 1996, the Antiterrorism and Effective Death Penalty Act of 1996 [AEDPA] governs this Court's review of his claim. *Lindh v. Murphy*, 521 U.S. 320, 322–24 (1997).

A. AEDPA STANDARDS OF REVIEW OF CLAIMS THAT HAVE BEEN ADJUDICATED ON THEIR MERITS IN STATE COURTS.

AEDPA imposes a "highly deferential standard for evaluating state-court rulings" on constitutional claims. *Woodford v. Visciotti*, 537 U.S. 19, 24 (2002) (*per curiam*); *see also Patterson v. Stewart*, 251 F.3d 1243, 1245 (9th Cir. 2001) (citing *Smith v. Robbins*, 528 U.S. 259, 268 n.3 (2000)). This standard ensures that federal habeas relief acts only "as a guard against extreme malfunctions in the state criminal justice systems, and not as a means of error correction." *Greene v. Fisher*, 565 U.S. 34, 38 (2011).

Congress intended AEDPA to foster federal-state comity and further society's interest in the finality of criminal convictions. *See Pinholster*, 563 U.S. at 181−82 (recognizing congressional "intent to channel prisoners' claims first to the state courts"); *Panetti v. Quarterman*, 551 U.S. 930, 945 (2007) ("[AEDPA's] design is to 'further the principles of comity, finality, and federalism.'") (quoting *Miller-El v. Cockrell*, 537 U.S. 322, 337 (2003)); *Rhines*, 544 U.S. at 276 ("One of

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[2] A claim challenging a petitioner's competency to be executed that, as here, is filed "as soon as [the] claim is ripe," is timely, and the provisions of AEDPA that govern the filing of "second or successive" petitions are not applicable. *Panetti v. Quarterman*, 551 U.S. 930, 945 (2007).

[AEDPA's] purposes is to 'reduce delays in the execution of state and federal criminal sentences, particularly in capital cases.'") (quoting *Woodford v. Garceau*, 538 U.S. 202, 206 (2003)). AEDPA "reflects the view that habeas corpus is a 'guard against extreme malfunctions in the state criminal justice systems,' not a substitute for ordinary error correction through appeal." *Harrington v. Richter*, 562 U.S. 86, 102–03 (2011) (quoting *Jackson v. Virginia*, 443 U.S. 307, 332 n.5 (1979) (Stevens, J., concurring in judgment)). A prisoner bears the burden of proving his habeas claims. *See Pinholster*, 563 U.S. at 181; *Lambert v. Blodgett*, 393 F.3d 943, 970 n.16 (9th Cir. 2004).

Consistent with this intent, Congress set forth in AEDPA "a difficult to meet and highly deferential standard for evaluating state-court rulings, which demands that state-court decisions be given the benefit of the doubt." *Pinholster*, 563 U.S. at 181 (quotations and citations omitted); *see also Richter*, 562 U.S. at 102 ("If [AEDPA's] standard is difficult to meet, that is because it was meant to be."). This deferential standard is codified in 28 U.S.C. § 2254(d):

> An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—
>
> (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established federal law, as determined by the Supreme Court of the United States; or
>
> (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

Even when a state court decision "is unaccompanied by an explanation," it nonetheless constitutes a decision on the merits under § 2254(d) and, to prevail on habeas, a prisoner must show that "there was no reasonable basis for the state court to deny relief." *Richter*, 562 U.S. at 98; *id.* at 100 ("This Court now holds and reconfirms that § 2254(d) does not require a state court to give reasons before its decision can be deemed to have been 'adjudicated on the merits.'"); *see also*

Johnson v. Williams, 568 U.S. 289, 301 (2013) ("When a state court rejects a federal claim without expressly addressing that claim, a federal habeas court must presume that the federal claim was adjudicated on the merits—but that presumption can in some limited circumstances be rebutted.").

Further, under § 2254(d), evidence presented for the first time in federal court is irrelevant to this Court's review. Under its plain terms, 28 U.S.C. § 2254(d)(2) limits this Court's review to evidence "presented in the State court proceeding." Likewise, when "a claim has been adjudicated on the merits by a state court, a federal habeas petitioner must overcome the limitation of § 2254(d)(1) on the record that was before that state court." *Pinholster*, 563 U.S. at 184–85. Evidence presented in federal court, but not considered by the state court that issued the merits decision, has "no bearing" on the analysis. *Id.*

Section 2254(d)(1)'s phrase "clearly established federal law" "'refers to the holdings, as opposed to the dicta of [the United States Supreme Court's] decisions as of the time of the relevant state-court decision.'" *Carey v. Musladin*, 549 U.S. 70, 74 (2006) (quoting *Williams v. Taylor*, 529 U.S. 362, 412 (2000)). When the Supreme Court has not ruled on a particular legal issue, no "clearly established federal law" exists, and the state court decision cannot be "contrary to, or involve[] an unreasonable application of," such law under 28 U.S.C. § 2254(d)(1). *See Woods v. Donald*, 575 U.S. 312, 317 (2015) (per curiam) ("Because none of our cases confront 'the specific question presented by this case,' the state court's decision could not be 'contrary to' any holding from this Court.") (quoting *Lopez v. Smith*, 135 S. Ct. 1, 4 (2014) (per curiam); *Thaler v. Haynes*, 559 U.S. 43, 49 (2010) (reversing court of appeals' grant of habeas relief because "no decision of this Court clearly establishes the categorical rule on which the Court of Appeals appears to have relied to grant relief"); *Wright v. Van Patten*, 552 U.S. 120, 126 (2008) ("Because our cases give no clear answer to the question presented, let alone one in [the prisoner's] favor, it cannot be said that the state court

unreasonably applied clearly established federal law. Under the explicit terms of § 2254(d)(1), therefore, relief is unauthorized.") (quotations, alterations, and citations omitted); *Brewer v. Hall*, 378 F.3d 952, 955 (9th Cir. 2004) ("If no Supreme Court precedent creates clearly established federal law relating to the legal issue the habeas petitioner raised in state court, the state court's decision cannot be contrary to or an unreasonable application of clearly established federal law."); *accord Richter*, 562 U.S. at 102; *Musladin*, 549 U.S. at 77. Furthermore, "Section 2254(d)(1) provides a remedy for instances in which a state court unreasonably applies [the Supreme] Court's precedent; it does not require state courts to extend that precedent or license federal courts to treat the failure to do so as error." *White v. Woodall*, 572 U.S. 415, 426 (2014) (emphasis in original).

Thus, this Court cannot grant habeas relief merely because a state court decision conflicts with authority from the United States Court of Appeals. "While circuit law may be persuasive authority for purposes of determining whether a state court decision is an unreasonable application of Supreme Court law, only the Supreme Court's holdings are binding on the state courts and only those holdings need be reasonably applied." *Clark v. Murphy*, 331 F.3d 1062, 1069 (9th Cir. 2003) (quotations and citations omitted); *see also Marshall v. Rodgers*, 569 U.S. 58, 64 (2013) (circuit court precedent should not "be used to refine or sharpen a general principle of Supreme Court jurisprudence into a specific legal rule that [the Supreme Court] has not announced").

A state court decision is "contrary to" clearly established federal law when the court has applied a rule of law that contradicts the governing law set forth in Supreme Court precedent, or has encountered a set of facts that are "materially indistinguishable" from a Supreme Court decision and yet reached a different result than the Supreme Court. *Early v. Packer*, 537 U.S. 3, 8 (2002) (per curiam); *see also Brown v. Payton*, 544 U.S. 133, 141 (2005); *Bell v. Cone*, 535 U.S. 685, 694 (2002). And a state court decision need not cite or discuss applicable

Supreme Court precedent, "so long as neither the reasoning nor the result of the state-court decision contradicts them." *Mitchell v. Esparza*, 540 U.S. 12, 16 (2003) (quotations omitted); *see also Packer*, 537 U.S. at 8.

"For purposes of § 2254(d)(1), 'an unreasonable application of federal law is different from an incorrect application of federal law.'" *Richter*, 562 U.S. at 101 (quoting *Williams*, 529 U.S. at 410). "A state court's determination that a claim lacks merit precludes federal habeas relief so long as 'fairminded jurists could disagree' on the correctness of the state court's decision." *Richter*, 562 U.S. at 101 (quoting *Yarborough v. Alvarado*, 541 U.S. 652, 664 (2004)). "[E]ven a strong case for relief does not mean the state court's contrary conclusion was unreasonable." *Richter*, 562 U.S. at 102; *see also White*, 572 U.S. at 419 ("even 'clear error' will not suffice"). Rather, a prisoner "must show that the state court's ruling on the claim being presented in federal court was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." *Richter*, 562 U.S. at 103. In other words, "'[i]f all fairminded jurists would agree the state court decision was incorrect, then it was unreasonable…. If, however, some fairminded jurists could possibly agree with the state court decision, then it was not unreasonable and the writ should be denied.'" *Dixon v. Ryan*, 2016 WL 1045355, at *3 (D. Ariz. Mar. 16, 2016) (quoting *Frost v. Pryor*, 749 F.3d 1212, 1225−26 (9th Cir. 2014)).

Reviewing a state court's factual findings under 28 U.S.C. § 2254(d)(2) requires this Court to "be particularly deferential to [its] state court colleagues." *Taylor v. Maddox*, 366 F.3d 992, 999–1000 (9th Cir. 2004). "[A] state-court factual determination is not unreasonable merely because the federal habeas court would have reached a different conclusion in the first instance." *Wood v. Allen*, 558 U.S. 290, 301 (2010). Rather, a prisoner must show that "an appellate panel, applying the normal standards of appellate review, could not reasonably conclude that the finding is supported by the record [before the state court]." *Maddox*, 366

F.3d at 1000. "[E]ven if '[r]easonable minds reviewing the record might disagree' about the finding in question, 'on habeas review that does not suffice to supersede the [state] court's . . . determination.'" *Wood*, 558 U.S. at 301 (quoting *Rice v. Collins*, 546 U.S. 333, 341–42 (2006)). Along these lines, the Ninth Circuit has only identified three types of state-court factual determinations that might be considered unreasonable for purposes of § (d)(2): (1) where a state court "plainly" misapprehends or misstates the record; (2) fails to consider "key aspects" of the record; or (3) ignores "highly probative" evidence supporting a petitioner's claim. *McGill v. Shinn*, 16 F.4th 666, 685 (9th Cir. 2021) (citing *Maddox*, 366 F.3d at 1001, 1008).[3]

Thus, § 2254(d)(2) sets "a daunting standard—one that will be satisfied in relatively few cases." *Maddox*, 366 F.3d at 1000.

Finally, this Court should grant habeas relief only if the state court's error actually prejudiced a prisoner—in other words, a habeas petitioner must prove that the error "had substantial and injurious effect or influence in determining the jury's verdict." *Brecht v. Abrahamson*, 507 U.S. 619, 637–38 (1993) (quotations omitted); *see also Bains v. Cambra*, 204 F.3d 964, 977 (9th Cir. 2000) ("[W]e now join the vast majority of our sister circuits by deciding that the *Brecht* standard should apply uniformly in all federal habeas corpus cases under [28 U.S.C.] § 2254."). This Court must apply *Brecht*'s standard even if the state court did not conduct a harmless-error analysis. *Bains*, 204 F.3d at 977. And if the state court did conduct a harmless-error analysis, a prisoner can only obtain relief only if that determination was unreasonable. *Davis v. Ayala*, 576 U.S. 257, 268–69 (2015).

Moreover, as the Supreme Court has recently held:

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[3] *Maddox* in turn cited *Wiggins v. Smith*, 539 U.S. 510, 528 (2003) and *Miller-El v. Cockrell*, 537 U.S. 322, 346 (2003).

> When a state court has ruled on the merits of a state prisoner's claim, a federal court cannot grant relief without first applying both the test this Court outlined in Brecht and the one Congress prescribed in AEDPA.

Brown v. Davenport, ___ U.S. ___, WL 1177498, at *3 (April 21, 2022).

B. DIXON IS COMPETENT TO BE EXECUTED.

Dixon contends that he is entitled to habeas relief because: (1) the state court's determination that he is mentally competent to be executed was based on unreasonable factual determinations; and (2) the state court unreasonably applied *Panetti v. Quarterman*, 551 U.S. 930, 945 (2007). Respondents disagree.

1. Clearly-established federal law.

The Supreme Court has explained the clearly-established federal law governing this area:

> [*Ford v. Wainright*, 477 U.S. 399 (1986)] identifies the measures a State must provide when a prisoner alleges incompetency to be executed. The four-Justice plurality in *Ford* concluded as follows:
>
> > "Although the condemned prisoner does not enjoy the same presumptions accorded a defendant who has yet to be convicted or sentenced, he has not lost the protection of the Constitution altogether; if the Constitution renders the fact or timing of his execution contingent upon establishment of a further fact, then that fact must be determined with the high regard for truth that befits a decision affecting the life or death of a human being. Thus, the ascertainment of a prisoner's sanity as a predicate to lawful execution calls for no less stringent standards than those demanded in any other aspect of a capital proceeding." 477 U.S., at 411–412, 106 S. Ct. 2595.
>
> Justice Powell's concurrence, which also addressed the question of procedure, offered a more limited holding. When there is no majority opinion, the narrower holding controls. *See Marks v. United States*, 430 U.S. 188, 193, 97 S. Ct. 990, 51 L.Ed.2d 260 (1977). Under this rule Justice Powell's opinion constitutes "clearly established" law for purposes of § 2254 and sets the minimum procedures a State must provide to a prisoner raising a *Ford*-based competency claim.
>
> Justice Powell's opinion states the relevant standard as follows. Once a prisoner seeking a stay of execution has made "a substantial threshold showing of insanity," the protection afforded by procedural due process includes a "fair hearing" in accord with fundamental

> fairness. *Ford*, 477 U.S., at 426, 424, 106 S. Ct. 2595 (opinion concurring in part and concurring in judgment) (internal quotation marks omitted). This protection means a prisoner must be accorded an "opportunity to be heard," *id*., at 424, 106 S. Ct. 2595 (internal quotation marks omitted), though "a constitutionally acceptable procedure may be far less formal than a trial," *id*., at 427, 106 S. Ct. 2595. As an example of why the state procedures on review in Ford were deficient, Justice Powell explained, the determination of sanity "appear[ed] to have been made solely on the basis of the examinations performed by state-appointed psychiatrists." Id., at 424, 106 S. Ct. 2595. "Such a procedure invites arbitrariness and error by preventing the affected parties from offering contrary medical evidence or even from explaining the inadequacies of the State's examinations." *Ibid*.
>
> Justice Powell did not set forth "the precise limits that due process imposes in this area." *Id*., at 427, 106 S. Ct. 2595. He observed that a State "should have substantial leeway to determine what process best balances the various interests at stake" once it has met the "basic requirements" required by due process. *Ibid*. These basic requirements include an opportunity to submit "evidence and argument from the prisoner's counsel, including expert psychiatric evidence that may differ from the State's own psychiatric examination." *Ibid*.

Panetti v. Quarterman, 551 U.S. 930, 948–50. The *Panetti* Court went on to find that the scope of the inquiry focuses on whether a prisoner can "reach a rational understanding of the reason for [his] execution." *Id.* at 958. And when mental illness is involved, "[t]he critical question is whether a prisoner's mental state is so distorted by a mental illness' that he lacks a 'rational understanding' of 'the State's rationale for [his] execution.'" *Madison v. Alabama*, 139 S. Ct. 718, 723 (2019) (quoting *Panetti*, 551 U.S. at 958–959).

2. The state court decision is not based on unreasonable factual determinations.

Dixon's first argument, that he is entitled to relief under 28 U.S.C. §2254(d)(2) because the state court's decision was based on unreasonable factual determinations,[4] fails. In the state court decision, the judge noted:

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[4] *See* Doc. 86 at 25–30.

> The evidence presented at the hearing consisted of 39 exhibits, admitted by stipulation, and the testimony of Dr. Lauro Amezcua Patino, M.D., FAPA, and Dr. Carlos Vega, Psy.D., bot of whom were qualified as experts and without objection, pursuant to Evidence Rule 702, and the expert witnesses examined the Defendant but presented conflicting opinions. Accordingly, their opinions are judged just as any other testimony, and the Court may give any such testimony as much credibility and weight as the Court thinks it deserves, considering the witness's qualifications and experience, the reasons given for the opinions, and all the other evidence in the hearing.

Doc. 89–1 at 72.

Dixon first disputes the judge's finding that the experts offered "conflicting opinions." Dixon asserts: "[D]r. Amezcua-Patino is the only expert who assessed Dixon's mental competency under the appropriate standard, and he testified unequivocally that Dixon lacks a rational understanding of the meaning and purpose of his execution." Doc. 86 at 23. However, this is contrary to the record. Dr. Vega agreed that he conducted his evaluation under the following legal standard—"whether Clarence Dixon'[s] mental state is so distorted or his concept of reality is so impaired that he lacks a rational understanding of the state's rational for his execution...." Doc. 89–9 [RT 05/03/22, pm] at 159–60. And that is not only the legal standard the parties agreed the state court should rely upon, *see* Doc. 89–1 at 72, but it is also the controlling legal standard set by the Supreme Court. *Compare with Madison*, 139 S. Ct. at 723. And Dr. Vega further testified that in his opinion Dixon has "a rational understanding of the state's reasons for his execution", and that Dixon "make[s] a connection between the 1978 murder he was convicted of and his upcoming execution". Doc. 89–9 [RT 05/03/22, pm] at 175. Moreover, in concluding his testimony, Dr. Vega once again opined that Dixon was competent to be executed under the proper legal standard:

> Q [By the State's attorney]. [A]nd then lastly, it [has] been emphasized today that Mr. Dixon has repeatedly made a number of challenges to his convictions, what does the fact that he has been for years and continues to this day to be challenging those convictions, what does that tell you about his understanding of the reasons for his execution, if anything?

> A [Dr. Vega]. He wants to prevent it. He wants to do everything that he can in order to see whether there is a possibility that they would accept his position and not execute him.
>
> Q. And does it say anything about his understanding of the connection between his conviction of murder and his execution?
>
> A. It says he absolutely understands the connection.

Doc. 89–9 [RT 05/03/22, pm] at 237–38.

Dixon fails to demonstrate that the state court's decision relied upon any unreasonable factual determinations. Instead, he offers his disagreements with the court's credibility determinations, and with the court's ultimate decision finding him competent to be executed. *See* Doc. 86 at 25–30. But the court's credibility determinations are not subject to reweighing by this Court,[5] and Dixon is not entitled to relief under § (d)(2) merely because he disagrees with the state court's ruling. *See McGill v. Shinn*, 16 F.4th 666, 680 (9th Cir. 2021) (federal habeas courts may not disturb a state court's factual findings unless they are objectively unreasonable, which is a substantially higher threshold than merely believing that the state court's determinations were incorrect). In short, Dixon fails to meet the "daunting standard"[6] set by § (d)(2).

3. The state court decision is neither contrary to, nor an unreasonable application of, controlling Supreme Court precedent.

In his second argument, Dixon contends that the state court decision is contrary to, or an unreasonable application of *Panetti*. *See* Doc. 86 at 30–32. Specifically, Dixon contends that contrary to *Panetti*, the state court based its

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[5] *Aiken v. Blodgett*, 921 F.2d 214, 217 (9th Cir. 1990) (concluding a habeas court may not "redetermine credibility of witnesses whose demeanor has been observed by the state trial court").

[6] *Maddox*, 366 F.3d at 1000.

decision on a finding that Dixon was aware of the State's rationale for seeking his execution, rather than on whether Dixon has a rational understanding of the State's motivation. *See id.* However, Dixon's argument ignores the plain language of the court's ruling. As previously discussed, the Court noted that it was guided by the *Panetti* standard in assessing Dixon's competency to be executed: whether his "mental state is so distorted by a mental illness that he lacks a rational understanding of the State's rationale for his execution."[7] *Compare* Doc. 89–1 at 72 *with Madison*, 139 S. Ct. at 723. And the court's order clearly indicates that it followed *Panetti*'s dictates:

> As a threshold determination ... the Court **FINDS** that the Defendant has a mental disorder or mental illness of schizophrenia, albeit that this mental disorder or illness can fall within a broad spectrum, which the Defendant has shown through the testimony of Dr. Patino and multiple exhibits. This determination, however, does not decide the question of competency. Rather, this threshold determination requires the Court to further consider whether Defendant's mental state is so distorted by this mental illness that he lacks a rational understanding of the State's rationale for his execution.

Doc. 89–1 at 72 (emphasis in original).

Thus, the state court cited the correct legal standard, and acknowledged that it applied that standard in reaching its decision. Therefore, Dixon cannot meet his burden of proving that no reasonable jurist could agree with the state court's decision that he is competent to be executed.

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[7] This standard of competency is much lower that other standards of competency that Dixon has previously met. *See Godinez v. Moran*, 509 U.S. 389, 399 (1993) (competency standard for waiving the right to counsel is the same as the competency standard for standing trial); *Dusky v. United States*, 362 U.S. 402, 402 (1960) (defendant is competent to stand trial if he has sufficient present ability to consult with this lawyer with a reasonable degree of rational understanding and a rational as well as factual understanding of the proceedings against him).

Dixon fails to meet his burden of proof of demonstrate that the state court decision was neither contrary to, or an unreasonable application of controlling Supreme Court case law, under *Panetti.*

IV. CONCLUSION.

Based on the foregoing authorities and arguments, Respondents respectfully request that the motion for stay of execution be denied, and that the petition for writ of habeas corpus be denied and dismissed with prejudice.

RESPECTFULLY SUBMITTED this 9th day of May, 2022.

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CERTIFICATE OF SERVICE

I hereby certify that on May 9, 2022, I electronically transmitted the attached document to the Clerk's Office using the ECF System for filing and served the attached document using ECF on the following registered participants of the ECF System:

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EXHIBIT LIST

Exhibit A: State's Response to Petition for Special Action, filed May 8, 2022, Arizona Supreme Court

EXHIBIT LIST

Exhibit A: State's Response to Petition for Special Action, filed May 8, 2022, Arizona Supreme Court

EXHIBIT A

ARIZONA SUPREME COURT

CLARENCE WAYNE DIXON,

Petitioner,

v.

The Honorable ROBERT CARTER OLSON, Judge of the Superior Court of the State of Arizona, in and for the County of Pinal,

Respondent Judge,

STATE OF ARIZONA,

Real Party in Interest.

No. CR–08–0025–AP

Maricopa County Superior Court
No. CR2002–019595

Pinal County Superior Court
No. S1100CR202200692

THE STATE OF ARIZONA'S RESPONSE TO PETITION FOR SPECIAL ACTION

[CAPITAL CASE]

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INTRODUCTION

Forty-four years ago, Petitioner Clarence Dixon raped and murdered Deana Bowdoin, a 21-year-old Arizona State University senior, in her apartment. The murder remained unsolved for decades until Dixon was tied to it through DNA evidence. In 2008 a jury convicted Dixon of first-degree murder and sentenced him to death.

Throughout the ensuing PCR and federal habeas proceedings, his attorneys argued that Dixon's focus on a legal challenge to his 1985 sexual assault conviction, which resulted in his DNA later being collected and ultimately matched to the 1978 murder, showed that he had been incompetent to waive his right to counsel and represent himself at his trial. But at every stage of PCR and federal review, the state and federal courts found that Dixon's focus on that legal challenge, though untenable, did not demonstrate a lack of competence.

After this court issued a warrant of execution and set an execution date of May 11, 2022, Dixon filed in the Pinal County Superior Court a request for determination of his competency to be executed, based almost entirely on the same assertion—that Dixon's focus on the purported flaws in his 1985 case, which was not enough to establish incompetency to waive counsel, nonetheless demonstrates that he lacks a rational understanding of the State's rationale for executing him.

The Pinal County Superior Court granted Dixon's request and held an evidentiary hearing regarding his competency to be executed on May 3, 2022. But just as Dixon failed to demonstrate that he was incompetent to waive counsel, he failed in the evidentiary hearing to establish that he is incompetent to be executed. The Superior Court did not abuse its discretion in finding that Dixon failed to meet his burden that his incompetent to be executed. This Court should deny review.

I. Issue presented for review.

1. Did the Superior Court abuse its discretion in finding Petitioner competent to be executed?

2. Whether Petitioner's mental state is so distorted by a mental illness that he lacks a rational understanding of the State's rationale for his execution?

II. Jurisdictional statement.

This Court has jurisdiction under A.R.S. § 13-4022(I).

III. Material facts.

A. Pertinent facts and procedural history prior to the evidentiary hearing to determine Dixon's competency to be executed.

In June 1977, Dixon struck a teenage girl with a metal pipe and was charged with assault with a deadly weapon. *Dixon v. Ryan (Dixon IV)*, 932 F.3d 789, 796

(9th Cir. 2019). Two court-appointed psychiatrists determined that Dixon was not competent to stand trial under Rule 11, noting his schizophrenia and depression. *Id.* After restoration proceedings, Dixon waived his right to a jury trial, and the trial court found him not guilty by reason of insanity. *Id.* Dixon was released pending civil proceedings on January 5, 1978. *Id.*

The next day, Deana Bowdoin, a 21-year-old ASU student, was found dead in her apartment. *State v. Dixon (Dixon II)*, 226 Ariz. 545, 548, ¶¶ 2–3 (2011). She had been strangled with a belt and stabbed. *Id.* Investigators found semen on Deana's underwear but were unable to match the resulting DNA profile to any suspect. *Id.*

In 1985, Dixon violently sexually assaulted a 20-year-old student near the NAU campus in Flagstaff. *State v. Dixon (Dixon I)*, 153 Ariz. 151, 152 (1987). The NAU police played a significant role in developing the evidence that resulted in Dixon's arrest and conviction for that crime. The NAU police were called when the victim returned to her dorm after the assault. *Id.* The victim gave a statement to an NAU police officer, and the NAU police broadcast an "attempt to locate" call based on the description of Dixon the victim provided. *Id.* Dixon was ultimately arrested by a Flagstaff Police Officer who heard the attempt to locate call. *Id.*

Following Dixon's arrest, Officer Bolson of the NAU Police Department showed the victim a photographic lineup in which she identified Dixon. *Id.* at 153.

The NAU officer then allowed the victim to view Dixon through a window, and she once again identified him as her assailant. *Id.* at 153–54. Dixon was convicted of seven felony offenses and sentenced to multiple life sentences. *Id.* at 152.

In 2001, a Tempe Police detective checked the DNA profile from the semen on Deana Bowdoin's underwear and found that it matched that of Dixon, whose DNA profile was in a national database as a result of his 1985 convictions. *Dixon II*, 226 Ariz. at 548, ¶ 4; *Dixon IV*, 932 F.3d at 796. Dixon had lived across the street from Deana at the time of the murder, and her friends and family knew of no previous contact between them. *Dixon II*, 226 Ariz. at 548–49, ¶ 4.

Dixon was charged with first degree murder. *Dixon II*, 226 Ariz. at 549, ¶ 5. Before trial, Dixon sought to represent himself because his appointed counsel would not file a motion he requested them to file. *Dixon IV*, 932 F.3d at 797. The legal theory Dixon sought to pursue was that "the DNA evidence linking Dixon to [Deana's] murder should be suppressed as fruit of the poisonous tree because it was obtained in connection with his 1985 assault conviction. The 1985 conviction itself was invalid, Dixon believed, because the campus police lacked the authority to investigate." *Id.*; *see also Dixon v. Ryan (Dixon III)*, 2016 WL 1045355, *5 (D. Ariz. March 16, 2016) ("This issue involved Dixon's theory that NAU officers lacked the statutory authority to investigate the case; therefore, according to Dixon, his prior conviction was 'fundamentally flawed' and the DNA comparison made

pursuant to his invalid conviction should be suppressed."). After conducting a colloquy with Dixon, the trial court found that Dixon "knowingly, intelligently, and voluntarily waived" his right to counsel, and Dixon represented himself at trial. *Dixon IV*, 932 F.3d at 797–98.

Dixon was convicted of first-degree murder and sentenced to death. *Dixon II*, 226 Ariz. at 549, ¶ 5. Throughout the ensuing years, Dixon argued that his "perseveration" on the DNA suppression issue regarding the NAU police, in addition to his 1977 Rule 11 proceedings and 1978 not guilty by reason of insanity verdict, showed his lack of competency to waive counsel. The state and federal courts uniformly rejected these challenges. In Dixon's PCR proceeding, the postconviction judge, who had presided over Dixon's trial, noted that Dixon's "thoughts and actions" throughout the trial proceedings "demonstrated coherent and rational behavior." *Dixon III*, 2016 WL 1045355, at *12. This Court denied review of that decision.

In its 2019 opinion, the Ninth Circuit found that because Dixon's competency and mental health were not at issue with respect to the 1985 assault and resulting conviction, "[t]he 1977 evaluations and the 1978 not guilty by reason of insanity verdict thus shed little light on Dixon's competence at the time he chose to waive counsel in 2006." *Dixon IV*, 932 F.3d at 803. The court noted that the record in his capital case contained "no evidence of competency issues at any time

throughout the course of these proceedings," and that the record demonstrated that at the time Dixon sought to represent himself he "understood the charges against him and the potential sentences, he was able to articulate his legal positions and respond to questions with appropriate answers, and that Dixon demonstrated rational behavior." *Id.* Significantly, the court stated that Dixon's interest in the DNA suppression issue "was not so bizarre or obscure as to suggest that Dixon lacked competence." *Id.*

The district court had likewise concluded that "Dixon's obsession with the NAU suppression motion was not so bizarre as to suggest incompetence," citing numerous decisions reaching that same conclusion with regard to other criminal defendants:

> "Criminal defendants often insist on asserting defenses with little basis in the law, particularly where, as here, there is substantial evidence of their guilt," but "adherence to bizarre legal theories" does not imply incompetence. *United States v. Jonassen*, 759 F.3d 653, 660 (7th Cir. 2014) (noting defendant's "persistent assertion of a sovereign-citizen defense"); *see United States v. Kerr*, 752 F.3d 206, 217–18 (2d Cir.), *as amended* (June 18, 2014) ("Kerr's obsession with his defensive theories, his distrust of his attorneys, and his belligerent attitude were also not so bizarre as to require the district court to question his competency for a second time."). "[P]ersons of unquestioned competence have espoused ludicrous legal positions," *United States v. James*, 328 F.3d 953, 955 (7th Cir. 2003), "but the articulation of unusual legal beliefs is a far cry from incompetence." *United States v. Alden*, 527 F.3d 653, 659–60 (7th Cir. 2008) (explaining that defendant's "obsession with irrelevant issues and his paranoia and distrust of the criminal justice system" did not imply mental shortcomings requiring a competence hearing).

Dixon III, 2016 WL 1045355 at *9.

On April 5, 2022, upon the State's motion and after Dixon concluded his direct appeal, first postconviction relief, and federal habeas corpus proceedings, this Court issued a warrant of execution setting an execution date of May 11, 2022. On April 9, 2022, Dixon filed a motion for determination of competency under A.R.S. § 13–4022. Pet. AppV1 13. The Superior Court granted his request on the same day, finding that Dixon's motion "satisfies the minimum required showing that reasonable grounds exist for the requested examination and hearing, within the meaning of A.R.S. § 13–4022(C) and as otherwise required by *Ford v. Wainwright*," and set an evidentiary hearing. Pet. AppV1 26–27. Respondents petitioned this Court for special action relief from the Superior Court's grant of an evidentiary hearing, and, after the matter was fully briefed by the parties, this Court remanded the matter to the Superior Court with instructions to "reconsider its ruling in light of the response and reply" filed by the parties. Order, No. CV-22-0092-SA, *State v. Hon. Robert Carter Olson* (Ariz. April 25, 2022), Doc.

10. On April 27, 2022, the Superior Court affirmed its grant of an evidentiary hearing. AppV1 29–32.[1]

B. Competency evidentiary hearing.

At the evidentiary hearing conducted on May 3, 2022, the Superior Court heard testimony from Dr. Amezcua-Patino and Dr. Vega, both of whom evaluated Petitioner to determine whether he is competent to be executed. The Superior Court also received 39 exhibits admitted into evidence, including the relevant reports of Dr. Amezcua-Patino and Dr. Vega. AppV1 33–37.

Dr. Amezcua-Patino diagnosed Dixon with schizophrenia, but conceded during his testimony that Dixon's schizophrenia diagnosis does not mean that he is incompetent to be executed. AppV1 at 72–73; AppV1 at 150. Dr. Amezcua-Patino further testified that Dixon has a history in which he "manifested schizophrenia-like symptoms, in particular, paranoia and some behaviors that may be perceived as being asocial or antisocial." AppV1 at 89. Dr. Amezcua-Patino also agreed that Dixon knows the fact that the State intends to execute him for the murder of Ms.

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[1] Though, in the interest of efficiency, the State did not challenge this ruling under A.R.S. § 13–4022(I), it does not concede that Dixon's motion for determination of competency met the required threshold of showing "reasonable grounds" for a competency examination under A.R.S. § 13–4022(C).

Bowdoin. AppV1 at 143. Dr. Amezcua-Patino opined that: (1) Dixon "holds a fixed delusional belief that his incarceration, conviction, and forthcoming execution stem from his wrongful arrest by the NAU police in 1985", AppV1 at 263; (2) Dixon is incompetent to be executed because he is "unable to rationally understand why he has not obtained relief on" his legal claims regarding DNA suppression, and he reports that he believes the courts have denied his legal claims because they fear embarrassment, AppV1 at 101–102; and (3) Dixon believes this fear of embarrassment is the reason the State seeks to execute him, AppV1 at 100. When asked by the Superior Court why he concludes that Dixon's legal theories are delusional, Dr. Amezcua-Patino stated that Dixon's schizophrenia diagnosis "in itself raises a probability of delusional thinking." AppV1 at 143–150

Dr. Vega testified that during his evaluation on April 23, 2022, Dixon was very cordial and easy to understand. AppV1 at 163. Dr. Vega remarked that Dixon is "obviously an average to above average intellect. His verbal intelligence is quite high …." *Id*. at 165. Dr. Vega further found that Dixon's comments about politics during the interview showed that Dixon "has a very good grasp of reality." *Id*. at 166. Dr. Vega further found that Dixon did not show symptoms of being delusional during his interview. *Id*. at 167. When Dr. Vega inquired about Dixon's legal theories involving the suppression of DNA evidence, Dixon stated that his DNA was at the murder scene and he was "not denying the evidence." AppV3 at

42; AppV1 at 169–170. However, Dixon reported that he did not remember committing the murder, suggesting that he may have had an alcohol-induced blackout at the time of the offense. AppV3 at 43; AppV1 at 169–170. Dixon further indicated that he didn't think it would be fair to be put to death for something he doesn't remember doing. AppV1 at 170. Dixon also stated that if he murdered the victim, then perhaps he deserved the death penalty, adding, "[B]ut if I was in another state, they wouldn't be killing me…" AppV3 at 42.

When Dr. Vega asked Dixon how he would feel if he were to have a memory of having killed the victim, Dixon stated that he would feel a sense of relief on his way to his execution. AppV1 at 170; AppV3 at 42. Dr. Vega further explained that Dixon is convinced that the DNA evidence obtained from the 1985 sexual assault that eventually tied him to the murder was unlawfully obtained, and therefore Dixon does not believe he should be executed "because of the fact that they have obtained something that is illegally obtained…." AppV1 at 170–171. Dr. Vega further opined that Dixon's belief that his legal challenges are valid is an aspect of his narcissistic personality, but that Dixon was not delusional in continuing to raise his challenges although the claims had a low probability of success. *Id*. at 171–172.

Dr. Vega opined that Dixon has antisocial personality disorder with empowerment and narcissistic features. *Id*. at 193. Dr. Vega stated that Dixon's

history of repeated criminal and maladaptive behavior is "pretty good evidence" of antisocial personality disorder. *Id*. at 218. When challenged about his diagnosis of antisocial personality disorder, Dr. Vega stated that the DSM is a "guide" and he rendered his diagnosis using his clinical judgment. *Id*. at 220; *id*. at 238; *id*. at 172–73.

Dr. Vega concluded that even if Dixon's reported belief that the courts have rejected his claims because they fear embarrassment is the product of delusional thinking, it does not prevent him from rationally understanding the State's reason for his execution, because Dixon rationally understands the "connection" between the murder and his execution. *Id*. at 174–75. Furthermore, Dr. Vega opined that Dixon "wants to do everything that he can in order to see whether there is a possibility that [the courts] would accept his position and not execute him," and therefore Dixon "absolutely understands the connection" between his murder and the execution. *Id*. at 237–239.

Argument.

Special-action review is highly discretionary and available to address only three questions including, as relevant here, whether the Respondent Judge's determination was arbitrary and capricious or an abuse of discretion. Ariz. R. P. Spec. Actions 3(c). In reviewing the superior court's order in the context of a special action, this Court must find that the superior court abused its discretion or

exceeded its jurisdiction or legal authority before granting relief. *Id*.; *Twin City Fire Ins. Co. v. Burke*, 204 Ariz. 251, 253. ¶ 10 (2003); *see also State v. Glassel*, 211 Ariz. 33, 44, ¶ 27 (2005) (trial court's finding of competency is reviewed for abuse of discretion). This Court "must determine whether reasonable evidence supports the [superior] court's finding that the defendant was competent, considering the facts in the light most favorable to sustaining the trial court's finding." *Glassel*, 211 Ariz. at 44, ¶ 27. Under an abuse-of-discretion review, this Court must "uphold a decision if there is any reasonable evidence in the record to sustain it." *State v. Martinez*, 230 Ariz. 208, 221, ¶ 69 (2012).

C. This Court should decline jurisdiction and find that Respondent Judge neither abused his discretion nor exceeded his authority in finding Dixon competent to be executed. Contrary to Petitioner's assertion, the Superior Court's factual findings are not clearly erroneous. Pet. Spec. Action at 3. Nor did the Superior Court misapply the standard under *Panetti*. Id. The Superior Court's decision is supported by the evidence.

Dixon argues that the Superior Court's "decision is irreconcilable with uncontroverted medical evidence in the record" and that the court erred when it found that Dixon engages in only "arguably delusional thinking." Pet. at 27–28. Dixon further argues that the Superior Court made erroneous factual findings not supported by the record. *Id*. at 28. Dixon's arguments fail.

Dixon contends that his schizophrenia and the "delusions that contaminate his thought process prevent him from understanding that his going to be executed"

for the murder of Ms. Bowdoin, and "instead lead him to believe that government actors" want to execute him because they don't want to be embarrassed. Pet. at 26. The evidence presented at the competency hearing does not support this cntention. First, Dixon contradicted the basis for this assertion to Dr. Amezcua-Patino during his interview on March 10, 2022:

> When questioned about the judicial system's rationale for denying his claims, [Dixon] stated that he did not think the judges, attorneys for the state, or his own attorneys were plotting against him, but stated his belief that they are, "Not against me but have a firm and decided philosophy that the law enforcement should always be backed up."

AppV1 at. 35; AppV1 at 142. Thus, Dixon's reported "belief" that the rationale for the state's execution is to avoid embarrassment could be a lie. The accusations he has made against judges and other actors in the criminal justice system could be a result of Dixon's obstinance, anger, and frustration toward his claims being repeatedly denied. With respect to this issue, Dr. Vega opined that Dixon believes "he is right – he is fixated on the fact that he is right and [the courts are] wrong," but that Dixon's belief is not a delusion. AppV1 at 199. As Dr. Vega concluded, even if Dixon believes that his legal claims have been denied because the courts want to avoid embarrassment, this belief does not render Dixon incapable of rationally understanding that the State intends to execute him for the murder. Dr. Amezcua-Patino stated clearly that Dixon's schizophrenia – which involves

symptoms of delusional thinking – does not in and of itself render Dixon incompetent to be executed. AppV1 at 72-73; AppV1 at 150.

Dixon's argument that the Superior Court erred in finding some of Dr. Vega's opinions "persuasive" is without merit. Pet. at 30. In its order the Superior Court cited to Dixon's statement that he would feel a sense of relief at the time of his execution if he had a memory of killing the victim as insight into Dixon's rational understanding of the State's rationale for his execution. AppV1 at 36. However, the Superior Court did not make a finding that Dixon has antisocial personality disorder as diagnosed by Dr. Vega. Thus, Dixon's arguments regarding the reliability of Dr. Vega's diagnostic impressions do not support the argument that the Superior Court abused its discretion. In any event, Dr. Vega testified that he used his clinical judgment in rendering his diagnoses. Furthermore, Dixon's retained expert conceded that Dixon's schizophrenia diagnosis does not by itself mean that he is incompetent to be executed. Therefore, Dr. Vega's opinion that Dixon is not schizophrenic does not undermine his conclusion that Dixon is competent to be executed. The Superior Court did not abuse its discretion.

D. The Superior Court did not misapply *Panetti*.

Dixon also argues that the Superior Court failed to properly apply the *Panetti* standard. Pet. at 32. Dixon's argument fails; the Superior Court properly applied *Panetti*'s standard for competency to be executed.

At the hearing, Dixon presented no evidence or suggestion of "gross delusions stemming from extreme psychosis" like the prisoners in *Panetti* and *Ford*, nor does his proffered evidence suggest that he is "so wracked by mental illness that he cannot comprehend the meaning and purpose of the punishment." *Madison*, 139 S. Ct. at 723 (quotations omitted). The prisoner in *Ford*, for example, believed in murder conspiracies involving prison guards and the KKK, that his relatives and national leaders were being held hostage, tortured, and sexually abused in the prison, that he was the pope and had appointed justices to the state supreme court, that he would not be executed because he could control the governor through mind waves, and ultimately regressed into "nearly complete incomprehensibility." *Ford*, 477 U.S. at 402–03. The prisoner in *Panetti* had experienced numerous prior psychotic episodes, including one in which he became convinced the devil possessed his home and engaged in various "rituals" to "cleanse" it, had been prescribed high dosages of psychiatric medications, and exhibited "bizarre," "scary," and "trance-like" at trial. 551 U.S. at 936.

Dixon, in contrast, is a serial predator of young women, who violently assaulted a teenager girl in 1977, murdered ASU student Deana Bowdoin the day after his release from custody in 1978, and in 1985, having so far having avoided consequences for the murder, violently sexually assaulted an NAU student. *See Dixon IV*, 932 F.3d at 796. His only purported "delusion" is his belief that a faulty

legal argument will result in suppression of the DNA evidence in his case and thus invalidate his conviction and death sentence, and that the courts have denied his claims because they fear embarrassment. And, in light of Dixon's contradictory statements, the Superior Court did not abuse its discretion in finding that Dixon's reported "delusion" did not render him incapable of rationally understanding the State's rationale for executing him.

"Criminal defendants often insist on asserting defenses with little basis in the law, particularly where, as here, there is substantial evidence of their guilt," but "adherence to bizarre legal theories, whether they are 'sincerely held' or 'advanced only to annoy the other side,' does not 'imply mental instability or concrete intellect … so deficient that trial is impossible.'" *United States v. Jonassen*, 759 F.3d 653, 660 (7th Cir. 2014) (quoting *United States v. James*, 328 F.3d 953, 955 (7th Cir. 2003)). Likewise, Dixon's adherence to a faulty legal theory, regardless whether his expert characterizes it as a "delusion," fails to meet his burden that he is incompetent to be executed under *Ford*/*Panetti*. On the contrary, it shows a rational understanding of not only why he is to be executed, but a way to undermine the conviction for which he is to be executed. Dixon's efforts to undermine the conviction show that he rationally understands the relationship between his arrest and conviction of the 1985 sexual assault and the murder of the victim. Dixon rationally understands that if his murder conviction and death

sentence remain intact, the State will execute him for the murder. *See, e.g., Dixon IV*, 932 F.3d at 797 ("Dixon believed that the DNA evidence linking Dixon to the murder should be suppressed as fruit of the poisonous tree because it was obtained in connection with his 1985 assault conviction. The 1985 conviction itself was invalid, Dixon believed, because the campus police lacked the authority to investigate.").

Contrary to Dixon's argument, the Superior Court did not misapply *Panetti* by considering Dixon's statements that showed that he is aware that the State intends to execute him for Deana Bowdoin's murder. The numerous statements Dixon made in which he ties his pending execution to the murder of the victim are relevant to the *Panetti* analysis. Similarly, the rational, sophisticated, organized, and coherent thinking that Dixon displayed in his various pleadings are relevant as to whether Dixon has a rational understanding of the State's rationale for executing him. Moreover, the Superior Court's rejection of the assertion that Dixon's mental illness renders him incapable of rationally understanding the State's rationale for executing him was supported by the evidence. Dixon's belief that the courts have denied his legal claims to avoid embarrassment is not proof that Dixon is incapable of understanding that his forthcoming execution is the result of his conviction for Deana Bowdoin's murder. Dixon's continual efforts to undermine the conviction – and ultimately, the DNA evidence that led to his conviction and death sentence for

first-degree murder – show that, despite Dixon's mental illness, he rationally understands that the State intends to execute him as punishment for murder. The Superior Court did not abuse its discretion.

IV. Conclusion.

For all the foregoing reasons, the State respectfully requests that this Court deny review.

RESPECTFULLY SUBMITTED this 8th day of May, 2022.

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